Calendar No. 821

72D CONGRESS, 1st Session } SENATE { REPORT No. 771

TO AMEND SECTION 5 OF THE SUITS IN ADMIRALTY ACT

JUNE 1 (calendar day, JUNE 6), 1932.—Ordered to be printed

Mr. AUSTIN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R 7238]

The Committee on the Judiciary, having had under consideration the bill (H. R. 7238) to amend section 5 of the suits in admiralty act, approved March 9, 1920, reports the same favorably to the Senate without amendment and recommends that the bill do pass.

It has been deemed advisable to place a time limitation on the actions to be revived by this bill, Acordingly, the first provision provides that any suit to be revived by this bill must have been commenced within the statutory period of limitation set by Congress for common-law actions against the United States. The second and third provisions of the amendment were suggested by the United States Shipping Board.

The purpose of this bill is to correct an injustice which resulted from an unforeseen and belated construction of the suits in admiralty act (41 Stat. 525, U. S. C., title 46, secs. 741–752, enacted March 9, 1920).

Prior to the enactment of the suits in admiralty act, the Supreme Court of the United States had held that the vessels owned by the United States and operated by the Fleet Corporation were subject to seizure by claimants in the same manner that vessels of private carriers were. The main purpose of the suits in admiralty act was to prevent the further seizure of United States merchant vessels for such acts as made the ordinary commercial vessel subject to seizure, and to free the United States from the embarrassment of having to put up bonds for their release after seizure. In short, it substituted a remedy in personam against the United States in place of the preexisting right in rem.

It had also been held by the United States Supreme Court prior to the passage of the suits in admiralty act, that the Fleet Corporation stood in exactly the same position as any private corporation and had

the same rights and privileges and was subject to the same obligations and liabilities.

For over eight years after the passage of the suits in admiralty act, the lower Federal courts all over the United States uniformly interpreted the suits in admiralty act as being merely a substitution of a right in personam for the preexisting right in rem against the vessel and held that the preexisting rights of claimants to sue the Fleet Corporation as a private corporation at common law or in admiralty, apart from the suits in admiralty act, or to sue the United States in the Court of Claims, or under the Tucker Act, were left undisturbed.

Accordingly, thereafter, many claimants consisting in the main of seamen injured in the service of United States merchant vessels and claimants for loss or damage to cargo on board these vessels brought actions against the Fleet Corporation either in admiralty, but not in accordance with the provisions of the suits in admiralty act, or at common law, or under the Tucker Act, or in the Court of Claims. For eight years such cases were defended by counsel for the Shipping Board. Many of them were settled and many of them went to judgment, and the judgments were paid by the Shipping Board. At no time during this period did the Shipping Board counsel seeks to have the United States Supreme Court pass on the question of the exclusiveness of the suits in admiralty act. As all lower Federal courts had uniformly ruled that such suits were proper, many claimants continued to bring their actions, not within the terms of the suits in admiralty act, but, in the main, as common law actions against the Fleet Corporation, in common law courts and in the court of Claims, subject to the rules and procedure of such courts.

Ten years later the Supreme Court held, for the first time, in a group of cases against the Emergency Fleet Corporation (280 U. S. 320), that the suits in admiralty act provided the sole and exclusive remedy against the United States and the Fleet Corporation for the adjudication of claims arising out of the operation of United States merchant ships. As a result of those decisions, many actions brought by claimants who had relied on the earlier uniform decisions of the various Federal courts and who had not brought their actions either in the manner or within the time provided in the suits in admiralty act were dismissed for lack of jurisdiction. This prevented these claimants from having a fair day in court and prevented any adjudication of these claims on their merits.

It is provided by this bill that those claimants who actually brought suit before January 6, 1930, and within the statutory period of limitation for common-law actions, but not in the manner or within the time provided by the suits in admiralty act may have their day in court on the merits, as prescribed by the suits in admiralty act.

The bill provides that only such actions as were brought within the time prescribed by Congress for common-law suits against the United States may be revived. No suits which were dismissed for lack of prosecution will be revived by the bill, nor will any interest be allowed on claims prior to the time of the institution of the new actions under this bill. The bill further provides that new actions must be brought before the expiration of the current year 1932.

When the United States Government began to engage in the operation of merchant vessels, it sought in every way possible to compete for freights with the merchant vessels of private carriers of similar

freight, most of which were of foreign nationality. In its competitive efforts to get business, it found itself handicapped because, as a sovereign Government, it could not be sued except by special act of Congress in each case, whereas a private carrier was readily amenable to the process of the courts in the event of death or injury to seamen or of any damage caused by the vessel or its operators to the cargoes or passengers on board. This led to the use of vessels of private carriers in preference to those of the Government.

In order to remove that competitive handicap, the United States Shipping Board Emergency Fleet Corporation requested Congress to permit seamen, cargo shippers, and passengers on Fleet Corporation vessels to sue the United States in the same manner as if the seamen were employed by, or the cargo were shipped, and the passenger sailed on a privately owned vessel.

If the claims to be affected by this bill had been made against the vessels of a competing private line and not against United States Government vessels, the claimants would not now find themselves without a remedy. The United States finds itself in the position that through a technicality there has resulted a discrimination in its favor as against a group of its own citizens; although, of course, such advantage was neither sought nor intended. Having advertised to cargo shippers and passengers that in the event of loss or damage they had the same rights against the United States Shipping Board vessels as against privately owned vessels, the United States Government should not seek to take advantage of that technicality, which is in contravention of their advertised conditions.

The view of the committee is best summarized by a quotation from Abraham Lincoln:

> It is as much the duty of the Government to render prompt justice against itself in favor of its citizens as it is to administer the same between private individuals. (Message dated December 3, 1861.)

In addition to the manifest justice of the bill, it appears that no appropriation will be necessary to pay any judgments which may be obtained against the Government by reason of the passage of this bill. The Fleet Corporation has on hand at the present time an insurance fund set aside to meet claims of this kind, of approximately $3,400,000. The nucleus of this fund was a payment by Messrs. Johnson and Higgins to the Fleet Corporation of the sum of $1,200,000 in February, 1923. Prior to this time Messrs. Johnson and Higgins, managers of the American P. and I. Club, had insured Shipping Board vessels. In 1923 the Fleet Corporation decided to withdraw its vessels from this club and operate its own protection and indemnity insurance fund. This payment of $1,200,000 was made by Messrs. Johnson & Higgins in exchange for the Fleet Corporation's assumption of liability for the then outstanding claims against the American P. and I. Club. Among those claims which were pending at the time this payment was made are several which were dismissed on account of the Supreme Court decisions and which will be revived by this bill.

The United States Shipping Board estimates that there would be 187 cases revived by this bill and that the total of the judgments recovered would not exceed $1,500,000. It is thus apparent that the Shipping Board has approximately twice as much money in the fund set aside to meet such claims as will be necessary to meet such judg-

ments as may be obtained, as well as to defray all legal expenses in connection with the defense of the actions.

The United States Shipping Board, after a hearing on the bill, has recommended its passage.

The bill also has the indorsement of the Maritime Law Association of the United States.

There follows a statement of the law, showing the proposed change in the law in italics:

SEC. 5. That suits as herein authorized may be brought only on causes of action arising since April 6, 1917, provided that suits based on causes of action arising prior to the taking effect of this act shall be brought within one year after this act goes into effect; and all other suits hereunder shall be brought within two years after the cause of action arises: *Provided further, That the limitations in this section contained for the commencement of suits hereunder shall not bar any suit against the United States or the United States Shipping Board Merchant Fleet Corporation, formerly known as the United States Shipping Board Emergency Fleet Corporation, brought hereunder on or before December 31, 1932, if such suit is based upon a cause of action whereon a prior suit in admiralty or an action at law or an action under the Tucker Act of March 3, 1887 (24 Stat. 505; U. S. C., title 28, sec. 250, subdiv. 1), was commenced prior to January 6, 1930, and was or may hereafter be dismissed because not commenced within the time or in the manner prescribed in this act, or otherwise not commenced or prosecuted in accordance with its provisions: Provided further, That such prior suit must have been commenced within the statutory period of limitation for common-law actions against the United States cognizable in the Court of Claims: Provided further, That there shall not be revived hereby any suit at law, in admiralty or under the Tucker Act, heretofore or hereafter dismissed for lack of prosecution after filing of of suit: And provided further, That no interest shall be allowed on any claim prior to the time when suit on such claim is brought as authorized hereunder.*

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